

1                                   **MINUTES OF THE COTTONWOOD HEIGHTS CITY**  
2                                   **PLANNING COMMISSION MEETING**

3  
4                                   **Wednesday, October 3, 2007**

5                                   **7:00 p.m.**

6                                   **Cottonwood Heights City Council Room**  
7                                   **1265 East Fort Union Boulevard, Suite 250**  
8                                   **Cottonwood Heights, Utah**  
9

10  
11    ***ATTENDANCE***

12  
13    **Planning Commission Members:**

14  
15    J. Thomas Bowen, Chairman  
16    Geoff Armstrong  
17    JoAnn Frost  
18    Doug Haymore  
19    Jim Keane  
20    Gordon Nicholl  
21    Sue Ryser  
22

13    **City Staff:**

14                                   Michael Black, Planning Director  
15                                   Glenn Symes, Associate Planner  
16                                   Shane Topham, City Attorney  
17                                   Brad Gilson, City Engineer  
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19  
20  
21  
22    **Excused:**

23  
24                                   Jerri Harwell  
25                                   Amy Rosevear  
26  
27

28    **REGULAR MEETING**

29  
30    Chairman J. Thomas Bowen called the meeting to order at 7:00 p.m. Procedural issues were  
31    reviewed.  
32

33    **1.     Public Comment.**

34  
35    (19:03:14) Frances Mielach identified herself as a Homeowners' Association Board Member at  
36    the Canyon Racquet Club Condominiums where she was also an owner. She asked the  
37    Commission if there had been any word on what had happened at the Racquet Club property that  
38    was sold next door. Planning Director, Michael Black, reported that they met with the owner  
39    and an agent nearly two years ago but had not heard from then since. Ms. Mielach reported that  
40    she lives in the northern and western most end of the condominiums and looks out onto the  
41    property. She noticed there had been a lot of digging and people in and out. The property was  
42    not well maintained and it did not look very attractive to those whose homes look out onto it.  
43    The owner had also put up a fence around it. She stated that previously it was a chain link fence.  
44    She stated that the property owners blocked their egress onto the backside of Racquet Club  
45    Drive, which concerned a lot of the homeowners since their only way out was through the one  
46    access onto Wasatch Boulevard. She was not sure if the owners left the gate to the property open

1 or if people were breaking in. She stated that there had been activity there at night and she  
2 thought about calling the sheriff personally to make them aware of the situation. The residents  
3 were concerned about their safety and break ins.

4  
5 Commissioner Armstrong stated that there was a lot of excavation that took place on the site for  
6 seismic purposes, however, to his knowledge there was no excavation taking place currently.  
7 Ms. Mielach had not seen any activity recently, however, when the property was to be sold in  
8 2002, the person looking to purchase it did some excavation to determine the location of the  
9 fault. They then fixed it and it looked okay. The previous digging that took place had been  
10 repaired. Some of the homeowners wanted to know if there were regulations, laws, or codes as  
11 to how much digging could be done and whether the property would have to be returned to a  
12 certain state or at least maintained in a certain way. Chair Bowen suggested Ms. Mielach speak  
13 with Mr. Black. Mr. Black stated that he had not spoken to the property owner about their plans  
14 for the property although the City Engineer had spoken to them about the seismic studies taking  
15 place there. He encouraged her not to hesitate to call the sheriff if she sees people prowling on  
16 the site.

## 17 18 **2. Public Hearing – Conditional Use Permit – Wasatch Office Project.**

19  
20 (19:07:00) Mr. Black gave a brief presentation and stated that the applicant was requesting a  
21 conditional use for three office buildings totaling 42,000 square feet on property zoned RM.  
22 Property in that zone carried with it a conditional use option for offices. As a result, the request  
23 was consistent with the RM zone. The project began in 2001 where the County reviewed a  
24 request to change the general plan and denied it. Subsequent to that in 2004, the County  
25 approved the zone change and approved and RMZC zone change, in which they approved a new  
26 ordinance for the two properties allowing for office buildings with square footages totaling no  
27 more than 50,000 square feet and a height of no more that 35 feet to the mid-point of the roof  
28 and for uses limited to professional offices and medical/dental offices. Since the zone change,  
29 the applicants applied with the County for a conditional use, however, the City incorporated  
30 before the conditional use was finished. As a result, the file was closed and the applicant opened  
31 a new file with the City after the moratorium was lifted in July 2005. Since that time, staff had  
32 worked with the developer mainly on issues related to fault lines and slope stability. The City  
33 had held one open house and two public meetings where the public had a chance to look at the  
34 plans and comment on them.

35  
36 Mr. Black reviewed the site layout. The area shown in blue was the RM property being  
37 discussed. The property around it was zoned R-2 and R-1. He identified the few properties that  
38 front directly onto the property in question. He explained that the sensitive lands ordinance  
39 applied in the area and required the development not to exceed a maximum of 35% impermeable  
40 surface on site. Fault lines were identified on the map. It was noted that building number three  
41 was the most constrained by fault lines. It was recognized that there was a lot of slope on the  
42 property. Typically the slope accompanied a fault line. A 3-D rendering of the contour lines of  
43 the property was shown.

44  
45 (19:13:33) With regard to parking, Mr. Black reported that the developer met the minimum  
46 parking requirement for the most stringent use, which was medical/dental requiring 3.5 parking

spaces per 1,000 net square feet. The requirement was 118 stalls and the developer showed a minimum of 125 stalls. An overview of the parking was provided. Mr. Black stated that some parking was not shown since it was under Building #1. There was an option at one time to look at some permeable surface parking, however, that would require the removal of even more scrub oak. The Architectural Review Commission (ARC) recommended against the extended parking.

Mr. Black stated that the proposed landscaping represented an increase in vegetation throughout the entire site. There would be more vegetation at build out than there was currently. Along Wasatch Boulevard there was berming that would serve to hide some of the buildings and the parking lot from Wasatch Boulevard. The intent would be to retain as much existing vegetation as possible. He explained that the codes require pedestrian movement through parking lots. Colored concrete stamped crosswalks were shown throughout the parking area as well as a six-foot sidewalk down Wasatch Boulevard on the frontage of the property, four-foot sidewalks along all parking areas, and four pedestrian access points from the sidewalk and Wasatch Boulevard. The landscape plan for the project was meant to fit in with hillside type of development. A lot of clustered trees were proposed. The boulevard idea would include one tree every 35 feet, which was completely different and would not fit in with the nature of the area.

(19:17:50) Architectural issues were discussed. Mr. Black stated that the architecture was reviewed by the ARC. It was located in a gateway zone and issued a certificate of design compliance the previous week. The developer planned to use rocks, rough timbers, and sloped roofs with shingles. The equipment and air conditioning units would be completely shielded by vegetation and covered with a roof so they would not be seen or heard. To his knowledge there were to be no signs on the buildings and he recommended that be a condition of approval. He explained that the proposed building would not shadow Wasatch Boulevard because of the width and height. The setback from the property line was 25 feet and the setback from the actual road was closer to 40 feet.

Mr. Black noted that the building colors would vary from building to building. Signage would be accomplished in three steps. The first would be the signage on Wasatch Boulevard. The second would be at the entrance of the development where visitors would be directed to specific buildings. The third was outside and detached from the building in the form of a tenant sign. The Architectural Review Commission's recommendations were to protect the trees by identifying all of the trees to be protected. Before a grading permit would be issued, the applicants would be met on site and each tree to be saved would be identified. They would be marked and staff would go back and check periodically. If anything was removed that was not supposed to be, the applicant would have to replace it with something of similar size and quality.

Mr. Black explained that there was an increased vegetation requirement next to Building #2. The intent was to hide it more because it was slightly closer to Wasatch than the other buildings. A few more trees were added next to Building #2 and a lot more trees were added to the north end of the project. A bus shelter had been worked on for some time. The intent was for it to be adequate for this and other sites. Staff planned to work with the developer to come up with something functional that is more unique and aesthetic. The bus shelter would be located on Wasatch Boulevard. The developer showed lighting in the project. When staff reviewed it with the ARC, it was thought that the lighting at the entrance was too dim. Light was increased at that

1 point. That had already been accomplished on the plans. A City standard streetlight would be  
2 installed every 200 feet along Wasatch Boulevard. Mr. Black anticipated that there would be no  
3 light pollution since full cutoff lights were required. He suggested that lighting be shut down at  
4 10:00 p.m. except for what is required for building safety or the safety of people walking to their  
5 cars. Mr. Black stated that the intent was to keep the parking lot bright without polluting into the  
6 open areas.

7  
8 (19:27:47) UDOT representative, Kris Petersen, reported that originally the project asked for  
9 access off of Wasatch Boulevard. That access was denied because it did not meet their standards  
10 at the time. The matter went back to the City who denied the developer access off of Prospector.  
11 He explained that State code grants every property owner a right to access roadways. Since the  
12 applicants did not have reasonable access on other roadways, UDOT was bound by code to grant  
13 them access. That required a variance to the code in order to meet the higher law. In doing that  
14 they had gone through several rounds of submittals in negotiation with the developer to meet  
15 their minimum standards on Wasatch with regard to access. Currently, what was proposed was a  
16 five-lane section with acceleration and deceleration lanes with a turn lane in the middle of the  
17 roadway to allow people to turn left into the development and left out. He explained that there  
18 were no accesses opposite the development. Mr. Petersen explained that the process had been  
19 fairly arduous. The developer could not be denied access to the roadway but had to work to  
20 make it as safe as possible.

21  
22 City Engineer, Brad Gilson, stated that staff likewise had been through a very arduous,  
23 comprehensive process working with the developer on a number of geo-technical and geology  
24 issues related to the site. There were numerous fault lines running through the property and they  
25 had gone back and forth with their City Geologist and the applicants' geotechnical and  
26 geological consultant. They had evaluated setbacks and surface fault rupture studies. He noted  
27 that they required several additional field investigations to identify and map properly the existing  
28 fault lines on the site. They had been very concerned about slope stability. Samples were taken  
29 to evaluate the existing materials on site to quantify the slope stability based on existing static  
30 and dynamic conditions. The applicants were required to run a number of models and reanalyze  
31 everything from scratch since a homebuilder up above on Prospector Circle disturbed the  
32 hillside. They had gone through a lot of iterations with the developer and his geologist to ensure  
33 they meet current City code.

34  
35 (19:32:23) Hyrum Alba identified himself as a licensed engineer and geologist who performed  
36 all of the reviews on behalf of the City as the reports were submitted.

37  
38 Blaine Walker was present representing the developer, Utah Property Development, of which he  
39 was an owner. He introduced the project architects Blaylock & Partners, Bill Gordon from GSH  
40 Engineering, Randy Smith from Northern Engineering, and Alan Balmanno from the law firm of  
41 Hutchings Baird Curtis & Astill. Mr. Walker stated that they had tried to do everything the City  
42 had asked. They were zoned for office buildings and they tried to comply, and over comply  
43 where necessary, to make the project one that will be beneficial to the area.

44  
45 Chair Bowen reported that what was submitted was a conditional use application. That meant  
46 that a determination had already been made by the City Council that the office building is a

1 recognized use within that zone. He explained that the decision was made years ago. Under  
2 State law, they were talking about issuing a conditional use permit. City Attorney, Shane  
3 Topham, read from the Municipal Land Use Development Management Act (LUDMA), which  
4 was the enabling law by which cities regulate zoning. It stated that a land use ordinance may  
5 include conditional uses and provisions for conditional uses that require compliance with  
6 standards set forth in an applicable ordinance. A conditional use shall be approved if reasonable  
7 conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental  
8 effects of the proposed use in accordance with applicable standards. If the reasonably  
9 anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by  
10 the proposal or the imposition of reasonable conditions to achieve compliance with applicable  
11 standards, the conditional use may be denied. Mr. Topham explained that in land use there are  
12 permitted uses that people have the right to pursue without any input from the City. If the City  
13 wants to impose controls on some uses, it can call those uses conditional uses. In that case, the  
14 use is examined by a body to decide whether it is appropriate based on the nature of the property  
15 and the surrounding area. In this case, the property was a conditional use in the zone. The City's  
16 ability to curtail the use was limited. In 2005, the Legislature substantially rewrote LUDMA and  
17 the City was bound by it. It laid out some broad protections to property owners and broad  
18 guidelines for cities to follow. In the conditional use context, if the City decides to designate  
19 uses as conditional, there are standards for the City deciding whether that conditional use should  
20 be approved. The City has to approve the conditional use if reasonable conditions can be  
21 imposed that mitigate the anticipated detrimental effects of the use. The City would then have to  
22 come up with a list of reasonable conditions to mitigate those detrimental impacts.

23  
24 (19:39:35) Chair Bowen opened the public hearing.

25  
26 William Good gave his address as 7730 South Quicksilver Drive. He was present speaking on  
27 behalf of the residents of the Prospector II subdivision. He referred to page 2 of the staff report  
28 which stated that 65% of the site is unusable. He also referred to the sensitive lands ordinance  
29 and stated that only 30% of the slope area can be added to the area calculation to determine  
30 density. Using the plan survey map, he calculated the unusable slope area at 40% of the total  
31 area of the land. 30% of the unusable area was added to the project area to get to the total project  
32 area of about 163,000 square feet. According to the ordinance, the maximum allowable  
33 impervious area of the project is 35% of the total project area, not the total land area. That meant  
34 that the maximum allotted pervious area should be listed at 57,256 square feet rather than the  
35 level claimed on the plan at 77,420 square feet, which was exactly 35% of the total land content.  
36 He thought the calculation was incorrect and that the request should be denied on that basis.

37  
38 Mr. Good next referred to page 5 of the staff report allowing for a height of 35 feet for properties  
39 in the sensitive lands area. He explained that that was what the County approved with the zone  
40 change. In reading the ordinance itself, it was limited to 30 square feet rather than 35. He  
41 concluded that the County inappropriately and incorrectly approved it at 35 feet. He asked if the  
42 30 feet was measured to the top of the building or the mid-point of the roof.

43  
44 He referred to page 6, and stated that the plan did not specify 1972-050-FG, which requires all  
45 disturbed soil surfaces be stabilized and covered by November 1. He did not see that  
46 requirement included in the plan. The plan did not show that the existing rock trail would be

1 maintained. Chair Bowen responded that the Commission was aware of that and would address  
2 it. Mr. Good remarked that the plan did not comply with conditional uses and referred to  
3 paragraph D. He believed the proposed use was detrimental to the health, safety, and comfort of  
4 persons residing or working in the vicinity. Chair Bowen remarked that he stated previously that  
5 the decision was made two years earlier.

6  
7 (19:44:58) Mr. Good next referred to item K and stated that buffering to protect adjacent  
8 landowners was inadequate according to the plan. He stated that the project did not adequately  
9 preserve the historical environmental conditions of the property the way the plan is drawn out.  
10 He also noted that the operation and delivery hours had not been described by the developer to  
11 be compatible with adjacent land uses.

12  
13 Frank Brussow stated that one of the things the City must consider with a conditional use is the  
14 nature of the property and the use in the area. He viewed what was proposed as spot zoning and  
15 an unconstitutional use of property because all of the neighboring landowners were residential.  
16 He stated that there was no grand fathering of the commercial zone. Chair Bowen explained that  
17 State law was changed several years ago so that the size of the parcel being zoned is no longer an  
18 issue. In other words, State law authorizes what used to be called spot zoning. Mr. Brussow  
19 viewed spot zoning as an exception to the zoning law because it creates a situation where there is  
20 no longer any zoning because equal protection has been violated. Chair Bowen explained that  
21 State law allows exactly what he was complaining about. If he did not like it, he suggested he  
22 contact his legislator and have it changed. Mr. Brussow stated that when a patchwork of zoning  
23 is created, there is no zoning anymore and there is discrimination in favor of certain people and  
24 against others. He thought they should be quite limited. In this case, he stated that there was a  
25 hazard in the form of an earthquake anticipated to be more than 7 on the Richter Scale and it was  
26 over due. He did not think it was wise to allow more people in a higher density area. If they do,  
27 more people would be exposed to the inherent danger. He asked if trenching was done to  
28 accurately locate the fault line running through the property. He thought zoning was supposed to  
29 consider the health, safety, and welfare of the people in the area. He believed the highest and  
30 best use of the property was residential, as it would have less impact on the property.

31  
32 Mr. Brussow explained that the idea of zoning was a homogeneous use so that the people in the  
33 area have the same benefits or burdens. What was proposed would allow someone to go into a  
34 residential zone and use it commercially. Chair Bowen reiterated that the decision to zone the  
35 property was made two years earlier by the County Commission and the Cottonwood Heights  
36 City Council. Mr. Brussow stated that that was an exception to the general use around a  
37 residence. As a lawyer, he knew there was a gateway to sue the City for allowing the  
38 commercial use to continue to exist as an island in the middle of a residential zone. Furthermore,  
39 it would introduce more people because of the higher intensity use. He stated that there should  
40 be a proportion where one can figure out the propinquity of the building to the fault line.

41  
42 (19:52:25) Dan Wait gave his address as 3746 East Prospector Circle and stated that his home  
43 looks directly down onto the property. He had suffered damage inside his house due to a home  
44 being built next to him. He was concerned about the hill stability and wondered who would be  
45 responsible if his property was irreparably damaged. Chair Bowen suspected that the developer  
46 would be liable. Mr. Topham stated that the City could be liable if it could be proven that the

1 City was negligent. Mr. Wait stated that his home was the culmination of everything he had  
2 done in his life and he bought it because of the view. He was concerned about light pollution  
3 shining up into his house and possibly destroying his view. He was also worried about the  
4 project decreasing his property value. He preferred to see lights shut off at 7:00 p.m. rather than  
5 10:00 p.m. He was also concerned with reflective light. The damage he received from his  
6 neighbor's house being built had to do with vibration. He suspected that because the proposed  
7 buildings are bigger, there would be a lot more heavy construction equipment. He hoped the  
8 City could restrict the situation.

9  
10 (19:55:32) Chante McCoy gave her address as 7815 Prospector Drive. She reported that she and  
11 her husband bought their home only a few months prior and had no idea this was happening.  
12 She was concerned that it would affect their property values. She was confused as to why they  
13 were even invited to attend and sensed some antagonism.

14  
15 Carol Bee gave her address as 3542 South Summer Oak Circle. She expressed concern with  
16 Wasatch Boulevard. She had heard at one point that they were looking at putting in a traffic  
17 signal. She raised traffic concerns and stated that the traffic in the area was horrendous. Chair  
18 Bowen stated that the City was not widening the Boulevard but that UDOT might.

19  
20 Clark Lamb reported that he lived two blocks west of the site. In looking at the geologic maps,  
21 the building happened to be in one of the most dangerous zones in the City. It was highly  
22 volatile and the slope to the east had been created by a fault. He asked what sort of risk would be  
23 assumed by the City in the event buildings collapse. He also expressed concern with traffic and  
24 commercial buildings being put in a residential area. He read a newspaper article recently where  
25 the Governor had a task force study slope problems where homes were built on slopes and they  
26 slid down. Mr. Lamb stated that many people were going back to the City governments for  
27 restitution. He thought this situation created the same type of problem and that a lot of people  
28 would come into the buildings that are not aware of the hazards. He asked if adequate structural  
29 concern had been given to the buildings and whether they would survive an earthquake. As an  
30 architect, Mr. Lamb stated that there could be all sorts of calculations but no one really knows  
31 when and if an earthquake will hit. He thought it was unconscionable to put people at risk.

32  
33 Chair Bowen invited Mr. Lamb to submit information supporting his conclusions. Mr. Lamb  
34 referred to an article from the State about the occurrence of earthquakes. Chair Bowen stated  
35 that State law precludes the Commission from considering speculation and public clamor. He  
36 stressed that they had to have some factual basis. Mr. Lamb did not know what Mother Nature  
37 would do and thought if the City had looked at the site they might want to reconsider.

38  
39 (20:02:54) Candice Powers gave her address as 7682 Quicksilver Drive. In 1986 they had a  
40 situation where their backyard fell to the road below, which was Prospector Drive. They had  
41 built a retaining wall there to hold the soil and it was there for probably less than one year. They  
42 were unaware of the fact that there was a watershed running along the north side of the home.  
43 They had since repaired the wall but she continued to see the geologic changes taking place in  
44 her own backyard. She overlooked the proposed property and currently had five rock retaining  
45 walls placed there to allow for the drainage necessary for the water shed. When proposing such  
46 large buildings, she believed the water would be an issue. She stated that her rocks remained

1 unmoved but in the event of an earthquake that would not be the case. She did not want to be  
2 liable for the damage to the proposed buildings when her rocks relocate.

3  
4 (20:05:49) Don Machen gave his address as 8096 Mountain Oaks Drive. He stated that he did  
5 not receive notification because he does not live within 1,200 feet of the project. He was present  
6 speaking on behalf of the Top of the Mountain residential area. They were concerned about  
7 having commercial come into their residential area. He stated that they had been in many  
8 meetings on the matter and were waiting for a traffic report from UDOT. They had yet to  
9 receive a traffic count on the proposed location. Mr. Gilson stated that there were current counts.  
10 Chair Bowen agreed to make them available to the public. Mr. Machen did not think that it fit  
11 with the project by its measurement. Chair Bowen explained that UDOT was mandated by State  
12 law to provide an access to the property. They did not have a choice. The decision that the  
13 property is compatible with an office building was made years ago and was a conditional use  
14 within the zone. Mr. Machen stated that since that time, traffic in the area had changed  
15 dramatically. Chair Bowen responded that the property was still zoned for an office building by  
16 the County. He explained that the Commission was to deal with conditions on the office  
17 building. If there are adverse conditions that can't be mitigated, it could be denied. He stated  
18 that Mr. Machen's time would be best spent dealing with the adverse impacts and how they can  
19 or cannot be mitigated. Because the applicants filed under that, they had a vested right to pursue  
20 the application. He was certain that there would be a fatal accident in that location within the  
21 next five years.

22  
23 (20:11:20) Chair Bowen asked Mr. Machen to provide a basis with some factual background  
24 showing that the project ought not be approved. Without facts, the Commission could not  
25 consider the comments and public clamor. They would have to have evidence of some kind in  
26 the record to support their decision.

27  
28 Mr. Machen remarked that Commissioner Nicholl sat on the Unincorporated Area Committee  
29 previously and the matter came before him, however, the record showed that he never signed the  
30 document approving what was being discussed. Commissioner Nicholl remarked that it was a  
31 voluntary committee and he was not authorized to sign anything. He acknowledged he had been  
32 involved in the issue since the beginning and had heard all of the arguments and issues. He  
33 wanted to weigh all of that in order to render an intelligent and informed decision on the project.

34  
35 Mr. Machen stated that Chair Bowen's remark to a woman earlier in the evening was rude and  
36 out of line.

37  
38 (20:14:31) Mike Neilsen gave his address as 3322 Daneborg. He was retired and kept track of  
39 the goings on in the City. In listening to different conversations, he could understand the  
40 concerns raised. He stated that the property was zoned and buildings were going in. He wanted  
41 to rely on planning staff to do the best job possible. From what he had seen, it appeared that the  
42 buildings conformed. Chair Bowen remarked that the County approved 50,000 square feet.  
43 What was proposed was 42,000 square feet, which was less than the County approved.

44  
45 Rebecca Good, a Quicksilver Drive resident, stated that the property had gone through three  
46 governmental transitions and some things were lost along the way. It was zoned for eight single-



1 family homes with access off of Prospector. Access was not allowed off of Wasatch because it  
2 came off a residential road. Because it was a State highway, UDOT would not grant access.  
3 When they planned to do the rezoning, the Commission granted single-family, however, the  
4 homes didn't get built because it was not profitable for the developer. The County refused to  
5 grant approval for rezoning unless they had written confirmation from UDOT that they would  
6 allow access. They did not when the rezoning took place. Not until four days after did they get  
7 that commitment. Prior to that time they had no proof. That was one thing that was lost in the  
8 transition. Chair Bowen asked how that had any relevance to what was being discussed.  
9 Mrs. Good contended that it was not done legally. She had always heard that residential has to  
10 be accessed by a residential road. If it is commercial it must access from a commercial road.  
11 That was brought up during the public hearings and she informed the City that it cannot be  
12 landlocked. If UDOT denied access it would be rezoned back to residential. Chair Bowen  
13 explained that UDOT could not deny it since they had granted the access. Mrs. Good stated that  
14 it was done without due diligence and studying the history. Chair Bowen stated that the  
15 Commission did not have the authority to go back and challenge the zoning implemented by the  
16 County. He stated that it would have to be challenged by the City Council.

17  
18 Mrs. Good asked who held the actual deed to the property. It was determined that Blaine Walker  
19 held the deed and had 52% ownership. She suggested that quasi use be deleted from the zoning  
20 use. She noted that three uses were listed for the property; offices, professional offices, and  
21 quasi use. The ordinance stated that quasi use can be a residential facility, residential treatment,  
22 or a hotel. Chair Bowen stated that the County zoned it for an office building and had some  
23 strict requirements. Conditional zoning was put in place for this particular piece of property.  
24 Mrs. Good was extremely disappointed by the failed traffic study. She explained that a traffic  
25 study was supposed to be done by UDOT on Presidents' Day weekend but for some reason the  
26 markers kept being taken off the road. As a result, they really did not understand the impact of  
27 the traffic. They could look out the window and see traffic backed up for hours. She felt the  
28 traffic issue was extremely important, especially for safety. Chair Bowen invited Mrs. Good to  
29 submit factual data to show that these particular office buildings will cause problems.

30  
31 (20:25:44) Mrs. Good stated that when a person buys a residential property on or near a fault  
32 line, there is a law requiring them to be informed before the purchase. She asked how notice  
33 would be given to the occupants and clients that will be using the building. Chair Bowen assured  
34 her that they would be informed.

35  
36 Mrs. Good was also concerned about whether the developer had potential renters already. Chair  
37 Bowen explained that that didn't matter and was irrelevant to what was being discussed.  
38 Mrs. Good believed that what was relevant was that there were already numerous vacant offices.  
39 Chair Bowen explained that moving forward was an economic decision on behalf of the  
40 developer and not a decision to be made by the Commission.

41  
42 (20:27:10) Mr. Good stated that the 1996 geology study was very different from the most recent  
43 one, which seemed to fall in line with the plan. He thought the Commission ought to take a close  
44 comparison of both studies.

1 Kelly Calder gave his address as 7803 Prospector Drive and identified himself as a structural  
2 engineer. He remarked that he also had a degree in geology. In his work he designed for this  
3 type of situation often and there were codes to cover it. He was interested in seeing the soils  
4 report and asked if it was something he could take a look at. Chair Bowen stated that it was  
5 available. Mr. Calder was concerned as a structural engineer that the site was very challenged  
6 and there were numerous faults. Chair Bowen remarked that that was why it had taken two years  
7 to be presented.

8  
9 (20:29:43) Alan Balmanno identified himself as an attorney with Hutchings Baird Curtis & Astill  
10 and represented the developer. He urged the Commission to make a decision tonight since the  
11 process had been ongoing for several years. He stated that experts had looked at what was  
12 proposed. He did not want to create an expert battle. Chair Bowen stated that no decision would  
13 be made tonight. Mr. Balmanno referred to the legal standard, which was to approve if  
14 conditions can be put on the use.

15  
16 Robert Farnsworth gave his address as 7776 South Oak Shadow Circle. He was familiar with the  
17 site and was disappointed in his neighbors. He realized it was not popular to put an office  
18 building in the proposed area but he believed it was a good use. He recalled attending a couple  
19 of meetings when they were working on the gas station. He saw all of his neighbors get very  
20 upset that a few pumps were being put in at Smith's. As soon as it was approved and built, all of  
21 his neighbors patronized it. He believed the project was good and recognized that the developer  
22 had been involved in the process for a long time. He saw nothing that appeared to be a health,  
23 safety, or welfare issue and urged the Commission to move the project forward.

24  
25 (20:32:30) Mrs. Good asked when the developer would put a sound wall in. Chair Bowen did  
26 not believe there was intent to install one. Mrs. Good stated that when her neighbor was building  
27 a home, they forced her to put in \$20,000 to \$30,000 of stabilization down the hillside. She had  
28 not heard anything about the applicants trying to stabilize the hillside. Chair Bowen remarked  
29 that the problems with the existing house above the site were not the doings of the City.  
30 Mrs. Good stated that an earthquake was overdue and asked who would be responsible if damage  
31 occurs. Chair Bowen did not know and stated that it had no relevance to the topic of the  
32 building. She disagreed and thought all should understand the lack of safety.

33  
34 (20:35:24) Mr. Good requested that one of the conditions be that the parking and entrance be  
35 gated so that it is closed off after hours to prevent skiers from parking in the lot.

36  
37 Pamela Palmer gave her address as 7986 Top of the World Drive. She brought up the issue of  
38 bicycle traffic and realized that it applied to UDOT. She stated that there was a considerable  
39 amount of traffic on Wasatch since a lot of riders use it to go back and forth to the canyon. She  
40 could not imagine adding more traffic to it. She asked if there was any plan for a bicycle path.  
41 Chair Bowen responded that the applicants intended to put a bike path in.

42  
43 Mr. Walker thought that many of the items discussed were important such as the bicycle trail.  
44 They were not required to put it, in but they did. They also put additional parking in for bicycles  
45 on site since they believed their tenants would be within a five-mile radius and some may ride  
46 their bikes to work. They proposed a bus stop in front of the buildings because they wanted to

1 see people take the bus to work rather than drive. With regard to earthquake concerns, no one  
2 knew when it would happen. He appreciated the comments of the structural engineer and stated  
3 that they worked with a structural engineer at the County who studied how the buildings would  
4 have to be built. They were sensitive to that and did not want to see anybody hurt. He was  
5 aware of 100 homes to the south that were built right on the fault line. He was more concerned  
6 with those types of structures than structures being built today. They had already had their  
7 engineering reviewed and conducted geologic and traffic studies twice. He commented that each  
8 costs thousands of dollars. They had worked with the City on many of those issues. He stated  
9 that they were going over and above the requirements and planned to make it a quality project.

10  
11 (20:38:28) Chair Bowen closed the public hearing.

12  
13 Commissioner Frost lived in the area and appreciated the neighbors' vigilance in trying to have  
14 impact in the community. She understood their frustration and realized they had watched  
15 properties slip down the hill. They all wanted what was best for the community. As a Planning  
16 Commissioner she had three concerns. One had to do with the earthquake code. With regard to  
17 the roadway she wanted to see more than the minimum standard met. She wanted to see  
18 mitigation and recognized traffic was a real issue that needed to be considered. With regard to  
19 stability of the slope, she wanted to see some real consideration in stabilizing the slope rather  
20 than the buildings being removed from the slope by a specific number of feet. She stated that the  
21 project could work for them or against them. She remarked that she voted against it when she  
22 served on the Planning Commission for the County and the issues hadn't changed. With regard  
23 to mitigation, they were stuck with the legality of it. She hoped it would not go to legal limits,  
24 but realized that the Commission serves the citizens first. She thanked those in attendance and  
25 asked for help in changing the laws.

26  
27 Commissioner Frost asked about water and drainage and whether that issue had been looked at.  
28 Mr. Black stated that it had and there didn't seem to be a problem. Mr. Gilson stated that it was  
29 evaluated in detail in conjunction with the geology and geotechnical reports. There was an under  
30 drain at the toe of the slope and there were requirements to keep the slope well drained. A  
31 comprehensive storm drain system was associated with the site. Commissioner Frost referred to  
32 a comment made by Mr. Good about the calculation of the usable space. He mentioned that on  
33 certain slopes it would have to be calculated differently. Mr. Black stated that that did not apply  
34 here because it is directly related to the calculation of density for residential lots. He also  
35 pointed out that a majority of the steep hillside was owned by the people in Prospector Circle.  
36 The toe of the slope was still owned by the developer. Commissioner Frost asked how much the  
37 development would actually affect the slope. Mr. Black responded that the developer could go  
38 only 12 feet into the slope, however, he was proposing less than that. He explained that there  
39 were some engineered walls in the development that would be reviewed by Mr. Gilson.

40  
41 Commissioner Frost asked to see the traffic study and stated that a lot of aspects of the study  
42 were questioned because it was done with averages. She wanted to see the study and how it was  
43 calculated. She realized everyone was concerned about an earthquake and potential damage,  
44 however, they would have the same problem regardless of whether homes or condos are built. It  
45 did not matter what the structure was since the threat would exist regardless.

1 (20:46:09) Commissioner Haymore was extremely impressed by the care shown in the staff  
2 report but was impressed and persuaded by some of the things he had heard from the public  
3 input. Specifically, he wanted to double-check the assertions that there was an improper  
4 application or interpretation of ordinance. He wanted to make sure that is taken into  
5 consideration and reviewed. He did not want to rely solely on staff's interpretation. If found to  
6 be appropriate within those parameters, he thought it was important to say that it was a carefully  
7 thought out plan that is very good considering the zone. He admitted that he would fight a  
8 developer trying to develop something other than residential in his neighborhood, however, as  
9 the Chair had pointed out numerous times, that was not what was being discussed. They were  
10 dealing with the zoning in place and the appropriate steps to make uses consistent with the  
11 zoning and as friendly to the surrounding area as possible. He reiterated that he thought it was  
12 important to recheck the interpretation of the ordinance before proceeding.

13  
14 (20:48:19) Commissioner Keane asked if sound generation from the property had been dealt  
15 with. Mr. Black responded that they had not mainly because Wasatch Boulevard was right next  
16 to the property. He did not see how an office development could generate more noise than  
17 Wasatch Boulevard. He explained that air conditioning units would be covered and screened and  
18 would not be visible or heard.

19  
20 With regard to the 10:00 p.m. light turnoff, he asked how that time was established rather than  
21 7:00 p.m. or 8:00 p.m. Mr. Black stated that it was common within the City for lights to go out  
22 at 10:00 p.m.

23  
24 Commissioner Keane asked if additional information was needed from UDOT to address some  
25 of the questions raised such as traffic count. Chair Bowen responded that UDOT would provide  
26 the City with a traffic count. A UDOT representative, stated that as part of the January 25 public  
27 meeting held with the Mayor, they decided they would count Presidents' Day weekend to see  
28 what the worst-case traffic was that occurs on that roadway. Unfortunately, the traffic counters  
29 were damaged and the data obtained meant nothing. A traffic count was required as part of the  
30 traffic study. They evaluated the peak hour one day in January and compared it to a July day.  
31 The impact to the roadway was then evaluated. It was reviewed and revisions were made to  
32 account for the issues they had. He stated that staff had a copy of the report.

33  
34 (20:55:15) Commissioner Frost referred to the criteria on cutting or having access off of Wasatch  
35 Boulevard. She realized it was a right of land use and stated that there were three streets there  
36 within 1,300 to 1,400 feet, all accessing off to the east. In the report, she asked that staff  
37 elaborate on criteria as to why it could not have been connected to either of the other accesses.  
38 Mr. Petersen explained that in staff's initial denial of the request of the application to access  
39 Wasatch, they denied it and told them that they had reasonable access off of an existing City  
40 street. That was denied by the City or the County at the time. Access issues were discussed.

41  
42 Commissioner Nicholl stated that it had been well established that he had been involved with the  
43 issue probably longer than anyone else in the room, with the exception of the applicants. He  
44 thought they were very close to making a final decision but realized more information had been  
45 brought forward by both the developer and the citizens. He was not in a rush to vote.

1 (20:58:40) *Commissioner Nicholl moved to extend the open portion of the hearing until two*  
2 *weeks from tonight at 5:00 p.m. so that the applicant and the citizens will have an opportunity*  
3 *to submit to the City in writing, any new and pertinent information that they may have. A vote*  
4 *shall not be taken on the issue by the Planning Commission within the next thirty (30) days so*  
5 *that they can have an opportunity to evaluate the information received tonight, get answers*  
6 *from staff, and consider any new information that might be received in the next two weeks.*  
7 *Commissioner Armstrong seconded the motion.*

8  
9 Chair Bowen remarked that the matter would be back on the agenda the first meeting in  
10 November for a decision. Commissioner Nicholl remarked that he would be out of town during  
11 the first meeting in November. He had spent so much of his time on the issue that he really  
12 wanted to vote on it. Chair Bowen stated that there would only be one meeting in November and  
13 one in December. That being the case, Commissioner Nicholl suggested that the matter be  
14 extended until the next meeting and that the public and the developer be given until 5:00 p.m.  
15 Tuesday, October 9, to provide information in writing. The matter would be on the October 17  
16 agenda for a decision only.

17  
18 *Commissioner Nicholl moved to amend his motion to extend the matter to December 5, and*  
19 *that the citizens and the developer have until 5:00 p.m. on Wednesday, October 17, to submit*  
20 *further information to the City.*

21  
22 Commissioner Haymore was troubled and did not think matters of public business should be  
23 juggled based on a Commission Member's schedule. He thought the Commission had had ample  
24 time to hear the matter. The questions to be answered could be done the following Tuesday and  
25 the matter heard by October 17. He strenuously urged the Commission to defeat the motion.

26  
27 In response to a question raised, Mr. Black felt that he could address all of the issues brought up  
28 today by October 17.

29  
30 *Vote on motion: JoAnn Frost-Aye, J. Thomas Bowen--Aye, Geoff Armstrong--Aye, Doug*  
31 *Haymore--Nay, Jim Keane--Nay, Gordon Nicholl--Nay, Sue Ryser--Nay. The motion failed.*

32  
33 (21:08:35) *Commissioner Haymore moved to continue the matter for a decision only until*  
34 *October 17 with the submission deadline of Tuesday, October 9, at 5:00 p.m. Commissioner*  
35 *Frost seconded the motion. Vote on motion: JoAnn Frost-Nay, J. Thomas Bowen-Aye, Geoff*  
36 *Armstrong-Aye, Doug Haymore-Aye, Jim Keane-Aye, Gordon Nicholl-Aye, Sue Ryser-Aye.*  
37 *The motion passed.*

38  
39 The Commission took a five-minute break.

40  
41 **3. Public Hearing – Conditional Use Permit – Walgreen's Drugstore.**

42  
43 (21:22:57) Mr. Symes presented the staff report and stated that the location of the site was 2330  
44 East Fort Union Boulevard. The request was for a conditional use permit for a Walgreen's drug  
45 store. The store was proposed to be 13,192 square feet with a drive-thru window. 24-hour  
46 operation was requested. Drug stores were listed as a conditional use. The proposed layout was

1 described. The main entrance would be directed toward the intersection and there would be a  
2 storefront on both Front Fort Union and 2300 East. Most of the landscaping would be along  
3 2300 East and Fort Union Boulevard. Additional landscaping was requested on the eastern  
4 portion to screen some of the area from the westbound traffic on Fort Union. The store was  
5 proposed at a height of about 20 feet with a parapet of about 26 to 28 feet. All of the roof  
6 mounted equipment would be screened, particularly because of the grade difference coming  
7 down Fort Union Boulevard. Staff recommended approval of the request.

8  
9 Kevin Deis of Phillips Edison Company, was present representing the applicant. His recollection  
10 was that the request was for the pharmacy to operate 24 hours but not the drive-thru. He  
11 remarked that they would be leasing the property from the owner of the shopping center.

12  
13 Chair Bowen opened the public hearing.

14  
15 (21:26:36) Frances Mielach remarked that she was a registered pharmacist and the 24-hour  
16 operation could be a safety issue since pharmacies have a tendency to get robbed. She wanted to  
17 make sure Walgreen's addressed that in some way.

18  
19 There were no further public comments. The public hearing was closed.

20  
21 Mr. Symes' experience with Walgreen's was that they are typically open 24 hours per day.  
22 Commissioner Armstrong agreed and stated that generally that was the case nationwide.

23  
24 Commissioner Haymore stated that the proposed store would be across the street from a  
25 convenience store that is open 24 hours. He remarked that there was also a Walgreen's on the  
26 corner of 9400 South and 2000 East and he had personally been in the store when the pharmacy  
27 was closed. He stated that the pharmacy are not generally tied directly to the store hours. He  
28 viewed that as a market condition.

29  
30 (21:29:07) Chair Bowen stated that one of the distinctions was that the 7-Eleven was put in by  
31 the County rather than the City. Commissioner Keane was concerned about the location of the  
32 building and the fact that it would be facing the intersection. If it was back along the strip mall  
33 he would have no problem with it. Because of its location, he viewed the 7-Eleven as a  
34 detriment to the area.

35  
36 Commissioner Frost asked if there was any landscaping between the sidewalk, the road, and the  
37 building. Mr. Deis responded that that portion of the site would be raised and they would lower  
38 the rear of the site. They would also replace all of the landscaping and put in a more extensive  
39 landscaped area. It was noted that the existing building comes close to the sidewalk in one  
40 location.

41  
42 In response to a question raised by Commissioner Armstrong, Mr. Deis confirmed that they  
43 would continue to use the two existing entrances. Commissioner Armstrong was well acquainted  
44 with the property and stated that the buildings there currently had once been restaurants that had  
45 been unsuccessful. He had no doubt that Walgreen's would be successful. With regard to the  
46 24-hour request, he saw no reason to deny it since there was another 24-hour business across the

1 street. He was in favor of 24-hour service. Because they were the nation's largest single drug  
2 store chain he was sure they were familiar with the dangers involved in 24-hour operation. As a  
3 result, that did not concern him.

4  
5 (21:32:26) Chair Bowen asked about the hours of operation at the Dan's Food Store. It was  
6 determined that they close at 12:00 midnight. Most of the larger stores had cut back their hours.  
7 Harmon's was one of the few that was open 24 hours. Because the store would be well lit, it  
8 would be a detriment to crime. Mr. Deis stated that one of the issues with the 24-hour operation  
9 had to do with economics. Walgreen's always asked for 24-hour approval and they look to see if  
10 it is financially feasible. It would not automatically be open 24 hours. Chair Bowen would be  
11 more enthusiastic about the 24-hour operation if it included the pharmacy.

12  
13 Commissioner Frost asked about the lighting on the site. Mr. Symes responded that because the  
14 store was so far away from any residential areas, light pollution was not a concern. The standard  
15 cut off lights were required. Commissioner Frost thought the store should be well lit if it is open  
16 24 hours. She did not like to go places at night if the parking lot lighting is dim.

17  
18 (21:36:37) *Commissioner Frost moved to approve the application subject to the following staff*  
19 *conditions:*

20  
21 ***Planning:***

- 22  
23 1. ***That the building be limited to 13,192 square feet.***
- 24  
25 2. ***That the developer install a total of three (3) City standard lights, which include two (2)***  
26 ***along Fort Union Boulevard and one (1) along 2300 East as shown on the approved***  
27 ***plans.***
- 28  
29 3. ***Landscaping shall be completed as the plans represent and shall be completed at the***  
30 ***time of final occupancy. In addition, a 100% landscape bond shall be required to***  
31 ***ensure the improvements are made as represented.***
- 32  
33 4. ***All landscaped tress shall be a minimum of 2-inch caliper upon planting.***
- 34  
35 5. ***That all improvements to the sidewalk on Fort Union Boulevard and 2300 East be***  
36 ***completed before final occupancy is granted for any building.***
- 37  
38 6. ***Lighting is required to be full cutoff able.***
- 39  
40 7. ***The developer shall provide refuse collection for the properties.***
- 41  
42 8. ***That the architecture of the proposed building be consistent with the approved***  
43 ***architectural plans.***
- 44  
45 9. ***That the store be allowed 24-hour operation.***
- 46

1 **10. That the conditional use permit be reviewed upon complaint.**

2  
3 **Engineering:**

- 4
- 5 **1. That all geotechnical calculations be consistent with the requirements of the City**
  - 6 **Engineer.**
  - 7
  - 8 **2. That the developer follow the recommendations of the City Engineer with regard to all**
  - 9 **retaining walls and ground disturbance.**
  - 10
  - 11 **3. That the developer follows the grading plans as submitted and reviewed by the City**
  - 12 **Engineer.**
  - 13
  - 14 **4. That any changes to the grading plan be reviewed by the City Engineer.**
  - 15
  - 16 **5. That the developer complies with all other necessary requirements of the City**
  - 17 **Engineer.**
  - 18

19 **Fire Department:**

- 20
- 21 **1. The installation of three (3) fire hydrants. Water systems must be installed and**
  - 22 **functioning prior to arrival of combustible construction elements on site.**
  - 23
  - 24 **2. That the fire hydrant installed has a three-foot clear area around it in which no other**
  - 25 **obstruction is placed.**
  - 26
  - 27 **3. All building and fire code requirements must be followed.**
  - 28
  - 29 **4. That the developer complies with all other necessary requirements of the City's Fire**
  - 30 **Official.**
  - 31

32 **Commissioner Nicholl seconded the motion. Vote on motion: JoAnn Frost-Aye, J. Thomas**

33 **Bowen-Aye, Geoff Armstrong-Aye, Doug Haymore-Aye, Jim Keane-Nay, Gordon Nicholl-Aye,**

34 **Sue Ryser-Aye. The motion passed.**

35

36 **4. Public Hearing – Amendment to Golden Hills #16 Subdivision Plat.**

37

38 (21:19:05) Mr. Symes reported that the above item was a request for a plat amendment. In order

39 for the applicant to develop a subdivision, a plat amendment was needed. Staff believed the

40 proposed subdivision met all of the requirements and recommended approval of the plat

41 amendment.

42

43 Chair Bowen opened the public hearing. There were no public comments.

44

45 Staff confirmed that no public comments had been received.

46



1 (21:20:05) *Commissioner Haymore moved to approve the amendment to Golden Hills #16*  
2 *subdivision plat. Commissioner Armstrong seconded the motion.*

3  
4 Commissioner Haymore stated that the plat proposed less density than allowed by the current  
5 zoning in the area. For that reason he heartily supported it.

6  
7 *Vote on motion: JoAnn Frost-Aye, J. Thomas Bowen-Aye, Geoff Armstrong-Aye, Doug*  
8 *Haymore-Aye, Jim Keane-Aye, Gordon Nicholl-Aye, Sue Ryser-Aye. The motion passed.*

9  
10 **5. Approval of Minutes – September 5, 2007.**

11  
12 (21:37:15) *Commissioner Haymore moved to approve the minutes of September 5, 2007.*  
13 *Commissioner Armstrong seconded the motion. Vote on motion: JoAnn Frost-Aye, J.*  
14 *Thomas Bowen-Aye, Geoff Armstrong-Aye, Doug Haymore-Aye, Jim Keane-Aye, Gordon*  
15 *Nicholl-Aye, Sue Ryser-Aye. The motion passed.*

16  
17 **6. Planning Director's Report.**

18  
19 (21:37:48) It was reported that the Commission would meet only once in November and  
20 December.

21  
22 **7. Adjournment.**

23  
24 *Commissioner Frost moved to adjourn. Commissioner Keane seconded the motion. Vote on*  
25 *motion: JoAnn Frost-Aye, J. Thomas Bowen-Aye, Geoff Armstrong-Aye, Doug Haymore-*  
26 *Aye, Jim Keane-Aye, Gordon Nicholl-Aye, Sue Ryser-Aye. The motion passed.*

27  
28 The Planning Commission Meeting adjourned at 9:38 p.m.

1 *I hereby certify that the foregoing represents a true, accurate and complete record of the*  
2 *Cottonwood Heights City Planning Commission meeting held Wednesday, October 3, 2007.*

3  
4  
5  
6  
7  
8 

9 Teri Forbes  
10 T Forbes Group, Inc.  
11 Minutes Secretary  
12  
13

14 Minutes approved: 10-17-2007 sm